

Legislative Bulletin.....November 8, 2005

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H.R. 4241 – Deficit Reduction Act – Title V

Title V –Committee on the Judiciary

Background: Under the budget resolution (H. Con. Res. 95), the House authorizing committees were instructed to find savings to reduce the growth in mandatory spending. The House Judiciary Committee was originally tasked with finding \$300 million in savings as part of a \$35 billion package of savings over five years. Once the Republican Conference adopted the more ambitious goal of \$50 billion in savings over five years, the Committee was expected to find additional savings.

Note: The subtitle regarding the reorganization of the 9th Circuit Court is similar to an amendment offered by Rep. Mike Simpson, adopted in the 108th Congress as a House amendment to S. 878. The amendment was agreed to by a vote of 205-194 (see: <http://clerk.house.gov/evs/2004/roll492.xml>) on October 5, 2004.

Savings to Taxpayers: According to CBO, Title V would increase federal receipts (a credit against spending and therefore a form of savings) by \$428 million. Such savings amount to .8% of the \$53.9 billion deficit reduction package.

Table 1. Savings By Subtitle, Outlays In Millions

Committee on Judiciary	2006	2006-10
L-1 Nonimmigrant Visa Fees	-80	-500
Additional Judgeships	4	72
<i>(Future Administrative Costs to New Judgeships)¹</i>		<i>(400)</i>
Total Savings	-76	-428

¹ CBO estimates the cost of the new judgeships will exceed \$400 million over the 2006-2010 period, subject to discretionary appropriations. This cost is authorized at such sums as may be necessary in the bill but are not calculated in the Committee's reconciliation package figures, which only calculate mandatory spending. Assuming appropriations of funds for the new judgeships, the committee savings is more likely approximately \$28 million, instead of \$428 million.

Committee Action: In late October 2005, the House Judiciary Committee reported its submissions to the House Budget Committee to be compiled into one reconciliation package along with the submissions of the other authorizing committees. On November 3rd, the Budget Committee reported the package, the Deficit Reduction Act, for consideration by the full House of Representatives.

Summary by Subtitle:

Subtitle A: Visa Fees:

- Requires the Secretary of State to impose a \$1,500 fee on an employer, if the employer is sponsoring an alien who has worked for the company, its subsidiary, or affiliate outside the U.S. for one continuous year within the last three years and is petitioning for a U.S. visa as a nonimmigrant who will work for that company or a subsidiary or affiliate. This type of visa is known as an L-1 non-immigrant visa and was previously created under the Immigration and Naturalization Act. The current L-1 visa fee is \$690 (\$500 anti-fraud fee plus \$190 visa filing fee), and the \$1,500 fee will be in addition to, not in place of, the current fees.
- Imposed the \$1,000 fee on the company if the company is seeking for the first time to have the nonimmigrant worker's L-1 visa extended. This fee is only for the principal alien and not for the spouse or children who are accompanying or following the alien.
- Specifies that the employer may not require the alien who is the beneficiary of this visa to reimburse or otherwise compensate the employer for all or a part of the cost of the fee. CBO estimates that this new fee structure will apply to 70,000 people annually.

Note: The L-1 non-immigrant is defined as follows in current law (8 U.S.C. 1184(c)):

“(L) subject to section [1184 \(c\)\(2\)](#) of this title, an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him.”

Subtitle B: Circuit and District Judgeships

- Authorizes 68 new judgeships, 12 at the circuit level and 56 in the district courts. In addition, the bill would create 25 new permanent or temporary bankruptcy judgeships. Specifically, the President is authorized to appoint, with the advice and consent of the Senate the following circuit court judges:
 - 1 additional circuit judge for the First Circuit Court of Appeals
 - 2 additional circuit judges for the Second District Court of Appeals
 - 1 additional circuit judge for the Sixth Circuit Court of Appeals and
 - 5 additional circuit judges for the Ninth Circuit Court of Appeals, who shall be in California
 - for temporary judgeships: 1 additional circuit judge for the Eighth Circuit Court of Appeals and 2 additional circuit judges for the Ninth Circuit Court of Appeals, who shall be in California. Ten years after these judges are confirmed, a vacancy on the eighth circuit and 2 vacancies on the Ninth Circuit shall not be filled (essentially adding these additional judges for a 10-year time period).

Note: The 56 new judgeships created in the bill for the district courts in 22 states are outlined on pages 495-497 of the Budget Committee-reported bill. Of these, 44 are permanent additions, and 12 are temporary 10-year additions.

- Extends the temporary judgeships for an extra 5 years for the northern district of Ohio and makes permanent the judgeships in the districts of Hawaii and Kansas and the eastern district of Missouri.
- Establishes an Article III Court in the U.S. Virgin Islands, where there is one judicial district, comprising two divisions. Currently the Virgin Islands' District Court is considered a territorial court and according to various legal briefs there have been multiple disputes because the court was not an Article III Court established by Congress as a federal court.

Subtitle C: Bankruptcy Judgeships

- The subtitle creates 25 new bankruptcy judgeships, 17 permanent judgeships and eight 5-year temporary judgeships. The temporary judgeships are established in Delaware, Illinois, Puerto Rico, Georgia, Maryland, Michigan, New Jersey, New York, North Carolina, Pennsylvania, South Carolina and Tennessee (for further details see pages 514-517 of the Budget Committee-reported bill). There is also a sense of Congress that bankruptcy judges in the eastern district of California should conduct bankruptcy proceedings on a daily basis.

Subtitle D: 9th Circuit Reorganization

- No later than December 31, 2006, splits Alaska, Arizona, Idaho, Montana, Nevada, Oregon and Washington into a new 12th Circuit and redefines the 9th Circuit Court as California, Hawaii, Guam, and the Northern Mariana Islands.
- The 12th Circuit will have 14 circuit judges and the 9th will have 19 (down from its current 28 judges). Judges will become a part of either court depending on their state on the date of enactment, though senior judges may elect to be assigned to either. The bill details certain provisions to deal with ongoing cases when the current 9th Circuit divides into two circuits.

Additional Information: According to Judiciary Committee Chairman Sensenbrenner, the bill seeks to “address the administrative inefficiencies caused by the Ninth Circuit’s mammoth size. ... The Ninth has become so big – in geographic size, in workload, in number of active and senior judges – that it can no longer appropriately discharge its civic functions on behalf of the American people.” According to the Committee:

- The Ninth has 47 judges, almost twice the number of total judges of the next largest circuit.
- The Ninth represents 56 million people, or roughly one-fifth of our nation’s population. This is 25-million more people than the second largest circuit.
- The Ninth encompasses nearly 40% of the geographic area of the United States. H.R. 4093 creates a new Ninth that will feature California, Guam, Hawaii, and the Northern Mariana Islands. The new Twelfth will consist of the States of Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington.

Source: <http://judiciary.house.gov/media/pdfs/9thsplitintro102005.pdf>

Does this Subtitle Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: The bill makes modifications to the court system in the Virgin Islands and creates certain procedures for ongoing cases while the 9th Circuit is divided into two. According to CBO, the legislation would impose a new private-sector mandate, by requiring employers to pay when a petition is made for an L-1 visa allowing their foreign employees to transfer to work for companies in the United States.

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